

decisions of the FAA, the FCC and state public utility or service commissions or similar agencies, or the rules and regulations of Nasdaq (collectively, the "**Powertel Required Approvals**"), the execution, delivery or performance of this Agreement by Powertel and the consummation by Powertel of the transactions contemplated hereby will not, and on the date the Powertel Permitted Stock Dividend is declared and the date it is paid, such declaration or payment, as the case may be, will not (i) violate or conflict with the Restated Certificate of Incorporation or Restated By-laws of Powertel or of the similar organizational documents of any of the Powertel Subsidiaries, (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity (except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Reorganization), (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Powertel or any of the Powertel Subsidiaries is a party or by which any of their respective properties are bound, (iv) violate any law, court order, judgment, decree, or regulation applicable to Powertel or any of the Powertel Subsidiaries or by which any of their respective properties are bound, or (v) result in the creation or imposition of any Lien on any asset of Powertel or the Powertel Subsidiaries, except in the case of clauses (iii), (iv) or (v) for violations, breaches or defaults that could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Reorganization.

SECTION 2.06 SEC Documents and Other Reports. Powertel has filed with the SEC all documents required to be filed by it since January 1, 1997 under the Securities Act or the Exchange Act (the "**Powertel SEC Documents**"). As of their respective filing dates, the Powertel SEC Documents were prepared substantially in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed, and at the time filed with the SEC (or if amended or superseded by a filing prior to the date hereof, then on the date of such filing) none of the Powertel SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Powertel included in the Powertel SEC Documents have been prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Powertel and the consolidated Powertel Subsidiaries as of the respective dates thereof and the consolidated results of operations and consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

SECTION 2.07 Absence of Material Adverse Change. Except as disclosed in **Item 2.07** of the Powertel Letter or in the documents filed by Powertel with the SEC and publicly available prior to the date of this Agreement (the "**Powertel Filed SEC Documents**"), since December 31, 1999, Powertel and the Powertel Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course, consistent with past practices, and there has not been (i) any Material Adverse Change with respect to Powertel, (ii) except as a result of the Powertel Permitted Stock Dividend, any declaration, setting aside or payment of any dividend or other distribution with respect to its capital stock (other than regularly scheduled dividends on the Series E Preferred Shares and Series F Preferred Shares) or any redemption, purchase or other acquisition of any of its capital stock, (iii) except as a result of the Powertel Permitted Stock Dividend, any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or (iv) any material change in accounting methods, principles or practices by Powertel affecting its assets, liabilities or business, except insofar as may have been required by a change in generally accepted accounting principles.

SECTION 2.08 *Information Supplied.* None of the information supplied or to be supplied by Powertel specifically for inclusion or incorporation by reference in (i) the Registration Statement or (ii) the joint proxy statement (together with any amendments or supplements thereto, the “**Joint Proxy Statement**”) relating to the Stockholder Meetings will, in the case of the Registration Statement, at the time it becomes effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or in the case of the Joint Proxy Statement, at the time of the mailing of the Joint Proxy Statement or the time of the Stockholder Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply (with respect to Powertel) as to form in all material respects with the requirements of the Securities Act, and the Joint Proxy Statement will comply (with respect to Powertel) as to form in all material respects with the requirements of the Exchange Act. Powertel makes no representation or warranty with respect to any information supplied by VoiceStream or any other Person who is not an Affiliate of Powertel that is contained in the Registration Statement or the Joint Proxy Statement.

SECTION 2.09 *Permits; Compliance with Laws.* (a) Each of Powertel and the Powertel Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, charters, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for Powertel or any of the Powertel Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the “**Powertel Permits**”), except where the failure to have any of the Powertel Permits could not, individually or in the aggregate, have a Material Adverse Effect on Powertel, and, as of the date of this Agreement, no suspension or cancellation of any of the Powertel Permits is pending or, to the knowledge of Powertel, threatened, except where the suspension or cancellation of any of the Powertel Permits could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Powertel. The business of Powertel and the Powertel Subsidiaries is not being conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for possible violations that could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Reorganization. None of the representations and warranties made in this **Section 2.09** are being made with respect to Environmental Laws.

(b) Except as set forth in **Item 2.09** of the Powertel Letter:

(i) Powertel and each of the Powertel Subsidiaries holds, and is qualified and eligible to hold, all material licenses, permits and other authorizations issued or to be issued by the FCC to such entity for the operation of their respective businesses, all of which are set forth in **Item 2.09** of the Powertel Letter (the “**Powertel FCC Licenses**”). Each of the Powertel FCC Licenses that is subject to restrictions under Section 310(b) of the Communications Act is held by a Powertel Subsidiary.

(ii) The Powertel FCC Licenses are valid and in full force and effect, and neither Powertel nor any of the Powertel Subsidiaries is or has been delinquent in payment on or in default under any installment obligation owed to the United States Treasury in connection with the Powertel FCC Licenses. As used herein, the term “full force and effect” means that (A) the orders issuing the Powertel FCC Licenses have become effective, (B) no stay of effectiveness of such orders has been issued by the FCC, and (C) the Powertel FCC Licenses have not been invalidated by any subsequent published FCC action.

(iii) All material reports and applications required by the Communications Act or required to be filed with the FCC by Powertel or any of the Powertel Subsidiaries have been filed and are accurate and complete in all material respects.

(iv) Powertel and the Powertel Subsidiaries are, and have been, in compliance in all material respects with, and the wireless communications systems operated pursuant to the Powertel FCC Licenses are and have been operated in compliance in all material respects with, the Communications Act.

(v) There is not pending or, to Powertel's knowledge, threatened, as of the date hereof any application, petition, objection, pleading or proceeding with the FCC or any public service commission or similar body having jurisdiction or authority over the communications operations of Powertel or any of the Powertel Subsidiaries which is reasonably likely to result in the revocation, cancellation, suspension, dismissal, denial or any materially adverse modification of any Powertel FCC License or imposition of any substantial fine or forfeiture against Powertel or any of the Powertel Subsidiaries.

(vi) No facts are known to Powertel or the Powertel Subsidiaries which if known by a Governmental Entity of competent jurisdiction would present a substantial risk that any Powertel FCC License could be revoked, cancelled, suspended or materially adversely modified or that any substantial fine or forfeiture could be imposed against Powertel or any of the Powertel Subsidiaries.

(vii) Powertel and the Powertel Subsidiaries have not made any material misstatements of fact, or omitted to disclose any fact, to any Government Entity or in any report, document or certificate filed therewith, which misstatements or omissions, individually or in the aggregate, could reasonably be expected to subject any Powertel FCC Licenses to revocation or failure to renew, except to the extent that such revocation or failure to renew would not have a Material Adverse Effect on Powertel or the transactions contemplated by this Agreement.

SECTION 2.10 Tax Matters. Except as set forth in **Item 2.10** of the Powertel Letter or as would not have a Material Adverse Effect on Powertel: (i) Powertel and each of the Powertel Subsidiaries have timely filed (after taking into account any extensions to file) all Tax Returns required to be filed by them either on a separate or combined or consolidated basis; (ii) all such Tax Returns are correct in all respects and accurately disclose in all respects all Taxes required to be paid for the periods covered thereby; (iii) Powertel and the Powertel Subsidiaries have paid or caused to be paid all Taxes shown as due on such Tax Returns and all Taxes for which no Tax Return was required to be filed, and the financial statements contained in the Powertel SEC Documents reflect an adequate reserve as determined in accordance with generally accepted accounting principles for all material Taxes payable by Powertel and the Powertel Subsidiaries and not yet due (other than a reserve for deferred Taxes established to reflect timing differences between book and Tax treatment) for all taxable periods and portions thereof accrued through the date of such financial statements; (iv) none of Powertel or any Powertel Subsidiary has waived in writing any statute of limitations in respect of Taxes; (v) there is no action, suit, investigation, audit, claim or assessment that has been formally commenced or proposed to Powertel in writing with respect to Taxes of Powertel or any of the Powertel Subsidiaries where an adverse determination is reasonably likely; (vi) there are no Liens for Taxes upon the assets of Powertel or any Powertel Subsidiary except for Liens relating to current Taxes not yet due; (vii) all Taxes which Powertel or any Powertel Subsidiary is required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued on the books of Powertel or such Powertel Subsidiary; (viii) neither Powertel nor any Powertel Subsidiary has been a member of any group of corporations filing Tax Returns on a consolidated, combined, unitary or similar basis other than each such group of which it is currently a member; (ix) no deduction of any amount that would otherwise be deductible by Powertel or any of the Powertel Subsidiaries with respect to taxable periods ending on or before the Effective Time could be disallowed under Section 162(m) of the Code; (x) neither Powertel nor any of the Powertel Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (a) in the two (2) years prior to the date of this Agreement or (b) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Reorganization; (xi) neither Powertel nor any of the Powertel Subsidiaries is a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code; (xii) none of Powertel, VoiceStream or any of their Subsidiaries will be obligated to make a payment, in connection with the transactions contemplated hereunder or otherwise, to any employee or former employee of, or individual providing services to, Powertel or any Powertel Subsidiary that would be a "parachute payment" to a "disqualified individual" as those terms are defined in Section 280G of the Code without regard to whether such payment is reasonable compensation for personal services performed or to be performed in

the future; and (xiii) none of Powertel, VoiceStream or any of their Subsidiaries will be obligated to pay any excise taxes or similar taxes imposed on any employee or former employee of, or individual providing services to, Powertel or any Powertel Subsidiary under Section 4999 of the Code or any similar provisions as a result of the consummation of the transactions contemplated hereby, either alone or in connection with any other event.

SECTION 2.11 *Liabilities.* Except as set forth in the Powertel Filed SEC Documents or **Item 2.11** of the Powertel Letter, and as permitted by this Agreement and the Powertel Merger Agreement, Powertel and the Powertel Subsidiaries, taken as a whole, do not have any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by generally accepted accounting principles to be set forth on a consolidated balance sheet of Powertel and the Powertel Subsidiaries or in the notes thereto, other than (i) liabilities and obligations incurred in the ordinary course of business since December 31, 1999 or (ii) liabilities arising after December 31, 1999 which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Powertel.

SECTION 2.12 *Benefit Plans; Employees and Employment Practices.*

(a) Except as disclosed in the Powertel Filed SEC Documents or **Item 2.12(a)** of the Powertel Letter, or to the extent required by law or required to maintain compliance with provisions of the Code, neither Powertel nor any of the Powertel Subsidiaries has adopted or amended in any material respect any ERISA Benefit Plan of Powertel since the date of the most recent audited financial statements included in the Powertel Filed SEC Documents. Except as set forth in **Item 2.12(a)** of the Powertel Letter, Powertel does not have any commitment to create, adopt or contribute to any Powertel Benefit Plan. Except as disclosed in **Item 2.12(a)** of the Powertel Letter or in the Powertel Filed SEC Documents, as of the date of this Agreement, there exist no material employment, consulting, severance, bonus, incentive or termination agreements between Powertel or any of the Powertel Subsidiaries and any current or former employee, officer or director of Powertel or any of the Powertel Subsidiaries.

(b) **Item 2.12(b)** of the Powertel Letter contains a list of all the Powertel Benefit Plans. None of Powertel, any of the Powertel Subsidiaries, any officer of Powertel or any of the Powertel Subsidiaries or any of the ERISA Benefit Plans has on or before the date of this Agreement engaged in a "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) with respect to any ERISA Benefit Plan that could reasonably be expected to subject Powertel, any of the Powertel Subsidiaries or any officer of Powertel or any of the Powertel Subsidiaries to any Tax on prohibited transactions imposed by Section 4975 of the Code or to any liability under Section 502(i) or (l) of ERISA where such Tax or liability has or would be reasonably expected to have a Material Adverse Effect on Powertel. No ERISA Benefit Plan has incurred any "accumulated funding deficiency" (as defined in Section 412 of the Code or Part 3 of Title I of ERISA), whether or not waived. Neither Powertel nor any of the Powertel Subsidiaries has incurred and none of such entities reasonably expects to incur, any material liability to the PBGC with respect to any ERISA Benefit Plan. No assets of Powertel or any of the Powertel Subsidiaries are subject to Liens arising under ERISA or the Code on account of any ERISA Benefit Plan, neither Powertel nor any of the Powertel Subsidiaries has been required to provide any security under Sections 401(a)(29) or 412(f) of the Code, or under Section 307 of ERISA, and, to Powertel's knowledge, no event has occurred that could give rise to any such Lien or a requirement to provide any such security. Except as disclosed in **Item 2.12(b)** of the Powertel Letter, none of Powertel, the Powertel Subsidiaries or any ERISA Affiliate has at any time during the five-year period preceding the date hereof contributed to any "multiemployer plan" (as defined in Section 3(37) of ERISA).

(c) Except as disclosed in **Item 2.12(c)** of the Powertel Letter, and except for such matters as could not be reasonably expected to have a Material Adverse Effect on Powertel, to the extent applicable, (i) each ERISA Benefit Plan complies with the requirements of ERISA and the Code, (ii) each ERISA

Benefit Plan intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and nothing has occurred since the date of that determination that could reasonably be expected to adversely affect the qualified status of such plan and its related trust is tax-exempt and has been so since its creation, and (iii) each Powertel Benefit Plan has been maintained, administered and operated in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including but not limited to ERISA and the Code, which are applicable to such Powertel Benefit Plans.

(d) Except as disclosed in **Item 2.12(d)** of the Powertel Letter, all material contributions, reserves or premium payments under or to the Powertel Benefit Plans, accrued to the date hereof have been made or provided for.

(e) Except as disclosed in **Item 2.12(e)** of the Powertel Letter, and except for any liability as could not be reasonably expected to have a Material Adverse Effect on Powertel, Powertel has not incurred any liability under Subtitle C or D of Title IV of ERISA with respect to any "single-employer plan" within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by Powertel, or any entity which is considered one employer with Powertel under Section 4001 of ERISA.

(f) Except as disclosed in **Item 2.12(f)** of the Powertel Letter, neither Powertel nor any of the Powertel Subsidiaries has any obligation to provide retiree health or welfare benefits for any current or former employee under any Powertel Benefit Plan, except as required by Part 6 of Title I of ERISA or to avoid excise taxes under Section 4980B of the Code, and the terms of the Powertel Benefit Plans permit Powertel to amend or terminate such Powertel Benefit Plans at any time without incurring liability thereunder.

(g) Except as disclosed in **Item 2.12(g)** of the Powertel Letter, Powertel has not engaged in, nor is it a successor or parent corporation to an entity that has engaged in a transaction described in Section 4069 of ERISA.

(h) Except as disclosed in **Item 2.12(h)** of the Powertel Letter, the consummation or announcement of any transaction contemplated by this Agreement will not (either alone or upon the occurrence of any additional or further acts or events) result in any (i) payment (whether of severance pay or otherwise) becoming due from Powertel or any of the Powertel Subsidiaries to any officer, employee, former employee or director thereof or to the trustee under any "rabbi trust" or similar arrangement; (ii) benefit under any Powertel Benefit Plan being established or becoming accelerated, vested or payable; or (iii) "reportable event" (as defined in Section 4043 of ERISA) with respect to any ERISA Benefit Plan subject to Title IV of ERISA.

(i) Except as disclosed in **Item 2.12(i)** of the Powertel Letter, as of the date of this Agreement there are no pending disputes, arbitrations, claims, suits, grievances or, to the knowledge of Powertel, governmental audits involving a Powertel Benefit Plan (other than routine claims for benefits payable under any such Powertel Benefit Plan or routine audits) that would reasonably be expected either individually or in the aggregate, to have a Material Adverse Effect on Powertel.

(j) **Item 2.12(j)** of the Powertel Letter contains a list setting forth the name and current annual salary and other material compensation payable to each Significant Employee, and the profit sharing, bonus or other form of additional cash compensation paid or payable by Powertel or the Powertel Subsidiaries to or for the benefit of each such person for the current fiscal year. Except as set forth in **Item 2.12(j)** of the Powertel Letter, there are no oral or written contracts, agreements or arrangements obligating Powertel or any of the Powertel Subsidiaries to increase the compensation or benefits presently being paid or hereafter payable to any Significant Employees or any oral employment or consulting or similar arrangements regarding any Significant Employee that are not terminable without liability on thirty (30) days' or less prior notice. **Item 2.12(j)** of the Powertel Letter lists all written employment and consulting agreements with respect to any Significant Employee. Powertel has provided true and correct copies of all employment agreements listed on **Item 2.12(j)** of the Powertel Letter. Except for severance or retention obligations to Significant Employees set forth in **Item 2.12(j)** or as otherwise set forth in

Item 2.12(j), there is not due or owing and there will not be due and owing at the Effective Time to any Significant Employees, any sick pay, severance pay (whether arising out of the termination of a Significant Employee prior to, on, or subsequent to the Effective Time), compensable time or pay, including salary, commission and bonuses, personal time or pay or vacation time or vacation pay attributable to service rendered on or prior to the Effective Time, the aggregate of which exceeds \$50,000 for any Significant Employee. Except as disclosed in **Item 2.12(j)** of the Powertel Letter and other than claims made in the ordinary course of business consistent with past practice in an aggregate amount not to exceed \$500,000 neither Powertel nor any of the Powertel Subsidiaries have any liability arising out of claims made or suits brought (including workers' compensation claims and claims or suits for contribution to, or indemnification of, third parties, occupational health and safety, environmental, consumer protection or equal employment matters) for injury, sickness, disease, discrimination, death or termination of employment of any Significant Employee, or other employment matter to the extent attributable to an event occurring or a state of facts existing on or prior to the Effective Time.

(k) Except as set forth in **Item 2.12(k)** of the Powertel Letter, Powertel and each of the Powertel Subsidiaries (i) is in compliance with all applicable federal and state laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Powertel Employees, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect on Powertel or its financial condition or business; (ii) has withheld all amounts required by law or by agreement to be withheld from the wages, salaries and other payments to Powertel Employees; (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing, except as would reasonably be expected to not have a Material Adverse Effect on Powertel; and (iv) (other than routine payments to be made in the normal course of business and consistent with past practice) is not liable for any payment to any trust or other fund or to any governmental or administrative authority, with respect to unemployment compensation benefits, Social Security or other benefits for Powertel Employees.

(l) Except as disclosed in **Item 2.12(l)** of the Powertel Letter, as of the date of this Agreement there are no controversies, strikes, work stoppages or disputes pending or to Powertel's knowledge threatened against Powertel or any of the Powertel Subsidiaries, and no organizational effort by any labor union or other collective bargaining unit currently is under way with respect to any employee, which in any such case would reasonably be expected to have a Material Adverse Effect on Powertel. None of Powertel or any of the Powertel Subsidiaries is a party to a collective bargaining agreement. Except as set forth in **Item 2.12(l)** of the Powertel Letter, there is no, and there is not threatened, any labor dispute, grievance or litigation relating to labor, safety or discrimination matters involving any Powertel Employee including charges of unfair labor practices or discrimination complaints, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Powertel. There has been no engagement in any unfair labor practices by Powertel or the Powertel Subsidiaries within the meaning of the National Labor Relations Act which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Powertel.

SECTION 2.13 Litigation. Except as disclosed in **Item 2.13** of the Powertel Letter or in the Powertel Filed SEC Documents, as of the date of this Agreement, there is no suit, action, proceeding or investigation pending or, to Powertel's knowledge, threatened, against Powertel or any of the Powertel Subsidiaries before any Governmental Entity that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Reorganization. Except as disclosed in **Item 2.13** of the Powertel Letter or in the Powertel Filed SEC Documents, neither Powertel nor any of the Powertel Subsidiaries is subject to any outstanding judgment, order, writ, injunction or decree that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Powertel.

SECTION 2.14 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on Powertel, or would not otherwise require disclosure pursuant to the Securities Act or Exchange Act, (i) each of Powertel and the Powertel Subsidiaries has complied and is in compliance with all applicable Environmental Laws; (ii) the

properties currently owned or operated by Powertel or any of the Powertel Subsidiaries (including soils, groundwater, surface water, buildings or other structures) are not contaminated with any Hazardous Substances; (iii) to Powertel's knowledge, no Hazardous Substances were present, disposed, released or otherwise deposited on, under, at or from the properties formerly owned or operated by Powertel or any of the Powertel Subsidiaries during the period of ownership or operation by Powertel or any of the Powertel Subsidiaries; (iv) to Powertel's knowledge, neither Powertel nor any of the Powertel Subsidiaries is subject to liability for any Hazardous Substance disposal or contamination on any third party property; (v) neither Powertel nor any of the Powertel Subsidiaries has received any notice, demand, threat, letter, claim or request for information alleging that Powertel or any of the Powertel Subsidiaries may be in violation of or liable under any Environmental Law (including any claims relating to electromagnetic fields or microwave transmissions); and (vi) to Powertel's knowledge, neither Powertel nor any of the Powertel Subsidiaries is subject to any orders, decrees, injunctions or other arrangements (other than those of general applicability not specifically related to Powertel) with any Governmental Entity or regulatory authority or is subject to any indemnity or other agreement with any third party relating to liability under any Environmental Law or relating to Hazardous Substances (except for such agreements entered into by Powertel in the ordinary course of business).

SECTION 2.15 *Section 203 of DGCL.* The Board of Directors of Powertel has approved this Agreement, the Reorganization and the Powertel Stockholder Agreement and the transactions contemplated hereby, with the effect that the restrictions on business combinations contained in Section 203 of the DGCL will not apply to VoiceStream or Sub as a result of this Agreement, the Reorganization and Powertel Stockholder Agreement. To Powertel's knowledge, (i) no anti-takeover statute or similar law of Georgia or Delaware imposes restrictions which could reasonably be expected to adversely affect or delay the consummation of the transactions contemplated by this Agreement, and (ii) no "control share acquisition," "fair price," "moratorium" or other anti-takeover laws or regulations enacted under Georgia or Delaware law applicable to Powertel apply to this Agreement or any of the transactions related thereto.

SECTION 2.16 *Intellectual Property.* Except as set forth in the Powertel Filed SEC Documents or in **Item 2.16** of the Powertel Letter, the Intellectual Property Rights consist solely of items and rights which are: (i) owned by Powertel or the Powertel Subsidiaries; (ii) in the public domain; or (iii) rightfully used by Powertel or the Powertel Subsidiaries pursuant to a license, and, with respect to Intellectual Property Rights owned by Powertel or the Powertel Subsidiaries, Powertel or the Powertel Subsidiaries own the entire right, title and interest in and to such Intellectual Property Rights free and clear of any Liens. Powertel and the Powertel Subsidiaries have all rights in the Intellectual Property Rights necessary to carry out their businesses substantially as currently conducted except as could not reasonably be expected to have a Material Adverse Effect on Powertel. The Intellectual Property Rights do not infringe on any proprietary right of any Person, except to the extent that any such infringement, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on Powertel. As of the date of this Agreement, no claims against Powertel or any Powertel Subsidiary (or, to Powertel's knowledge, against any other holder of Intellectual Property Rights) (x) challenging the validity, effectiveness, or ownership by Powertel or the Powertel Subsidiaries of any of the Intellectual Property Rights, or (y) to the effect that the Intellectual Property Rights infringe or will infringe on any intellectual property or other proprietary right of any Person have been asserted or, to Powertel's knowledge, are threatened by any Person nor to Powertel's knowledge are there any valid grounds for any bona fide claim of any such kind. To Powertel's knowledge, there is no material unauthorized use, infringement or misappropriation of any of the Intellectual Property Rights by any third party, employee or former employee of Powertel or the Powertel Subsidiaries.

SECTION 2.17 *Opinion of Financial Advisor.* The Board of Directors of Powertel has received the oral opinion of Morgan Stanley & Co. Incorporated ("**Powertel Financial Advisor**"), on the date hereof, to the effect that, as of the date hereof, the consideration to be received in the Reorganization by Powertel's stockholders is fair to Powertel's stockholders from a financial point of view.

SECTION 2.18 *Brokers.* Except for the Powertel Financial Advisor, the fees and expenses of which will be paid by Powertel (and are reflected in an agreement with Powertel, a true and correct copy

of which has been furnished to and accepted by VoiceStream), no broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Powertel. In no event shall the amounts paid or payable by Powertel to the Powertel Financial Advisor in connection with the transactions contemplated by this Agreement exceed \$23,000,000.

SECTION 2.19 Tax Status. To the knowledge of Powertel after due investigation, neither Powertel nor any of its Affiliates has taken any action or failed to take any action which action or failure would jeopardize the qualification of the Merger as a reorganization within the meaning of Section 368(a) of the Code. To the knowledge of Powertel after due investigation, there are no facts or circumstances relating to Powertel or its Affiliates, including any covenants or undertakings of Powertel pursuant to this Agreement, that would prevent Morris, Manning & Martin, LLP from delivering the opinion referred to in **Section 6.02(b)** as of the date hereof.

SECTION 2.20 Contracts. Except as set forth in the Powertel Filed SEC Documents or in **Item 2.20** of the Powertel Letter, and except for this Agreement, the Powertel Merger Agreement and the agreements referenced hereby and thereby, neither Powertel nor any of the Powertel Subsidiaries is a party to or bound by: (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) or any agreement, contract or commitment the loss or termination of which could have a Material Adverse Effect on Powertel; (ii) any non-competition agreement or any similar agreement or obligation which materially limits or could materially limit Powertel or any of the Powertel Subsidiaries from engaging in the business of providing wireless communications services or from developing wireless communications technology anywhere in the world; or (iii) any management agreement, technical services agreement or other agreement whereby Powertel or any of the Powertel Subsidiaries is providing or is required to provide management or technical services to any other Person. Taken as a whole, the contracts and agreements required to be filed by Powertel with the SEC together with the contracts and agreements required to be set forth on **Item 2.20** of the Powertel Letter are collectively referred to as the "**Powertel Contracts**"). With such exceptions as, individually or in the aggregate, have not had, and could not be reasonably expected to have, a Material Adverse Effect on Powertel, (x) each of the Powertel Contracts is valid and in full force and effect (except to the extent they have previously expired in accordance with their terms), and (y) except as set forth in **Item 2.20** of the Powertel Letter, neither Powertel nor any of the Powertel Subsidiaries has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time, or both, would constitute a default under the provisions of any Powertel Contract. To the knowledge of Powertel, no counterparty to any such contract, agreement or commitment has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time, or both would constitute a default or other breach under the provisions of, such Powertel Contract, except for defaults or breaches which, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect on Powertel. Neither Powertel nor any of the Powertel Subsidiaries is a party to, or otherwise a guarantor of or liable with respect to, any interest rate, currency or other swap or derivative transaction, other than any such transactions which are not material to the business of Powertel or the Powertel Subsidiaries. Powertel has provided or made available to VoiceStream a copy of each agreement described in item (i), (ii) and (iii) above. The designation or definition of Powertel Contracts for purposes of this **Section 2.20** and the disclosures made pursuant hereto shall not be construed or utilized to expand, limit or define the terms "material" and "Material Adverse Effect" as otherwise referenced and used in this Agreement.

SECTION 2.21 Vote Required. The only vote of the holders of any class or series of capital stock of Powertel necessary to approve this Agreement and the transactions contemplated hereby is the Powertel Stockholder Approval. As of the date hereof, the Powertel Principal Stockholders have the requisite voting power to satisfy the Powertel Stockholder Approval.

SECTION 2.22 Transactions with Affiliates. Except as described in **Item 2.22** of the Powertel Letter or in the Powertel Filed SEC Documents, to Powertel's knowledge, no director or executive officer

of Powertel or any 5% or greater stockholder of Powertel is at the date hereof a party to any transaction with Powertel or any of the Powertel Subsidiaries in which the amount involved exceeds \$60,000, including any contract or arrangement providing for the furnishing of services to or by, providing for rental of real or personal property (including intellectual property) to or from, or otherwise requiring payments to or from Powertel or any of the Powertel Subsidiaries.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF VOICESTREAM AND SUB

Except as disclosed in the VoiceStream Filed SEC Documents and except as set forth in the VoiceStream Letter (it being agreed that disclosure of any item in the VoiceStream Letter shall be deemed disclosure with respect to any section of this Agreement to which the relevance of such item is reasonably apparent), (i) VoiceStream hereby represents and warrants as of the date hereof to Powertel as follows, and (ii) Sub hereby represents and warrants as of September 28, 2000 to Powertel as follows (but only to the extent any of the following relates to Sub):

SECTION 3.01 Organization. Each of VoiceStream and its Subsidiaries (collectively, the "VoiceStream Subsidiaries") is a corporation or limited liability company and Sub is a corporation duly organized, validly existing and in good standing (where such concept is applicable) under the laws of the jurisdiction of its incorporation or organization and has the requisite power and authority to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority could not reasonably be expected to have a Material Adverse Effect on VoiceStream or prevent or materially delay the consummation of the Reorganization. VoiceStream and Sub are duly qualified or licensed to do business and are in good standing (where such concept is applicable) in each jurisdiction in which the nature of their respective businesses or the ownership or leasing of their respective properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing (where such concept is applicable) could not reasonably be expected to have a Material Adverse Effect on VoiceStream or prevent or materially delay the consummation of the Reorganization. VoiceStream has delivered to Powertel complete and correct copies of its Certificate of Incorporation and By-laws and has made available to Powertel the certificate of incorporation and by-laws (or similar organizational documents) of each of the VoiceStream Subsidiaries.

SECTION 3.02 Ownership of Sub. All of the outstanding shares of capital stock of Sub have been validly issued and are fully paid and nonassessable. All of the outstanding shares of capital stock of Sub are owned by VoiceStream.

SECTION 3.03 Capital Structure. (a) The authorized capital stock of VoiceStream consists solely of (i) 1,000,000,000 shares of VoiceStream Common Stock, of which, as of July 31, 2000, (A) 214,617,441 shares were issued and outstanding, including the restricted shares listed on **Item 3.03** of the VoiceStream Letter, (B) no shares were held in the treasury of VoiceStream, (C) 9,625,762 shares were issuable upon the exercise of options outstanding under the VoiceStream 2000 Management Incentive Stock Option Plan, and (D) 274,844 shares were issuable upon the exercise of the warrants described in **Item 3.03** of the VoiceStream Letter, and (ii) 100,000,000 shares of preferred stock, \$0.001 par value, of VoiceStream, of which, as of July 31, 2000, 7,606 2½% Convertible Preferred Shares were issued and outstanding and owned by Hutchison Telecommunications PCS (USA) Limited, which shares, as of the date hereof, are convertible into 26,227,586 shares of VoiceStream Common Stock. The authorized capital stock of Omnipoint Corporation consists solely of (i) 200,000,000 shares of common stock \$0.01 par value, of which, as of July 31, 2000, 65,000,000 shares were issued and outstanding and owned by VoiceStream, and (ii) 10,000,000 shares of preferred stock, \$0.01 par value, of which, as of July 31, 2000, 6,355,195 shares of 7% Convertible Preferred Stock were issued and outstanding, which shares are convertible, as of the date hereof, into 8,425,082 shares of VoiceStream Common Stock. Except as set forth in **Item 3.03** of the VoiceStream Letter or permitted by the DT Merger Agreement and as to the exchange rights relating to the Cook Inlet Joint Ventures as set forth on **Item 3.03** of the VoiceStream Letter ("**Exchange**

Rights”) and except as a result of the VoiceStream Permitted Stock Dividend, (i) since July 31, 2000, no shares of VoiceStream Common Stock have been issued, except upon the exercise of options or the warrants described in the immediately preceding sentence, and (ii) as of July 31, 2000, there are no outstanding VoiceStream Equity Rights. For purposes of this Agreement, **“VoiceStream Equity Rights”** means subscriptions, options, warrants, calls, commitments, agreements, conversion rights, exchange rights or other rights of any character (contingent or otherwise) to purchase or otherwise acquire from VoiceStream or any of VoiceStream’s Subsidiaries or any Cook Inlet Joint Venture at any time any shares of the capital stock or other voting or non-voting securities of VoiceStream. **Item 3.03** of the VoiceStream Letter sets forth a complete and accurate list of all outstanding VoiceStream Equity Rights as of July 31, 2000 (*provided* that, with respect to options, such list need only set forth the aggregate number of options with weighted-average exercise prices at which grants have been made and need not specify grants by grantee). Since July 31, 2000, no VoiceStream Equity Rights have been issued except (1) after the date hereof, as permitted by Section 4.01 of the DT Merger Agreement or as a result of the transactions permitted by Section 5.15 of the DT Merger Agreement, (2) pursuant to the VoiceStream stock plans listed on **Item 3.03(a)** of the VoiceStream Letter, (3) pursuant to the Exchange Rights; (4) any increases in any existing VoiceStream Equity Rights arising from anti-dilution or similar adjustments resulting from the payment of the VoiceStream Permitted Stock Dividend, which increases, in the aggregate, do not, on the date the VoiceStream Permitted Stock Dividend is declared and on the date it is paid, increase the aggregate number of shares of VoiceStream Common Stock subject to VoiceStream Equity Rights by more than 0.75% in the aggregate.

(b) Except as set forth on **Item 3.03** of the VoiceStream Letter, there are no outstanding obligations of VoiceStream or any of VoiceStream’s Subsidiaries or any Cook Inlet Joint Venture to repurchase, redeem or otherwise acquire any shares of capital stock of VoiceStream.

(c) All shares of issued and outstanding VoiceStream Common Stock are validly issued, fully paid and nonassessable, and the shares of VoiceStream Common Stock to be issued to the Powertel Stockholders pursuant to this Agreement are not subject to any preemptive rights.

(d) All the outstanding capital stock of each of the VoiceStream Subsidiaries and each of the Cook Inlet Joint Ventures which is owned by VoiceStream is duly authorized, validly issued, fully paid and nonassessable and owned by VoiceStream or one of the VoiceStream Subsidiaries free and clear of any Liens except for Liens which are granted to secure indebtedness and are disclosed in **Item 3.03** of the VoiceStream Letter. Except as set forth on **Item 3.03** of the VoiceStream Letter and as to the Exchange Rights, except as hereafter issued or entered into in accordance with the DT Merger Agreement, there are no material existing subscriptions, options, warrants, calls, commitments, agreements, conversion rights, exchange rights or other rights of any character (contingent or otherwise) to purchase or otherwise acquire from VoiceStream or any VoiceStream Subsidiary or any Cook Inlet Joint Venture at any time any shares of the capital stock or other voting or non-voting securities or partnership interests or membership interests of any VoiceStream Subsidiary or any Cook Inlet Joint Venture, whether or not presently issued or outstanding (except for rights of first refusal to purchase interests in Subsidiaries which are not wholly owned by VoiceStream and the Cook Inlet Joint Ventures), and there are no outstanding obligations of VoiceStream or any of the VoiceStream Subsidiaries or the Cook Inlet Joint Ventures to repurchase, redeem or otherwise acquire any shares of capital stock or other voting or non-voting securities or partnership interests or membership interests of VoiceStream or any of the VoiceStream Subsidiaries or any Cook Inlet Joint Venture.

(e) No bonds, debentures, notes or other indebtedness of VoiceStream having the right to vote on any matters on which stockholders may vote are issued or outstanding except for any securities issued after the date hereof in accordance with Section 4.01 of the DT Merger Agreement.

SECTION 3.04 Authority. The Board of Directors of VoiceStream, at a meeting duly called and held, duly adopted resolutions (i) approving this Agreement, the Reorganization, the Powertel Stockholder Agreements and the VoiceStream Stockholder Agreements, (ii) determining that the Reorganization, including the Merger, and the issuance of shares of VoiceStream Common Stock in accordance with the

Reorganization, is fair to and in the best interests of VoiceStream stockholders and (iii) recommending that the VoiceStream stockholders approve and adopt this Agreement. The Board of Directors of Sub has declared the Reorganization advisable and approved this Agreement. VoiceStream and Sub have the requisite corporate power and authority to execute and deliver this Agreement and the other agreements to which they are parties, if any, that are referenced herein and, subject, in the case of VoiceStream, to the approval and adoption of this Agreement by a majority of the votes cast at a meeting by the holders of the VoiceStream Common Stock and the VoiceStream Voting Preferred Stock, voting together as a single class (the **"VoiceStream Stockholder Approval"**), to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by VoiceStream and Sub and the consummation by VoiceStream and Sub of the Reorganization and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of VoiceStream and Sub, subject, in the case of VoiceStream, to the VoiceStream Stockholder Approval. This Agreement has been duly executed and delivered by VoiceStream and Sub and (assuming the valid authorization, execution and delivery of this Agreement by Powertel) constitutes the valid and binding obligation of each of VoiceStream and Sub enforceable against each of them in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights and remedies generally and (ii) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at law). The issuance of shares of VoiceStream Common Stock in connection with the Reorganization and the filing of a registration statement on Form S-4 with the SEC by VoiceStream under the Securities Act for the purpose of registering the shares of VoiceStream Common Stock to be issued in connection with the Reorganization (together with any amendments or supplements thereto, whether prior to or after the effective date thereof, the **"Registration Statement"**) have been duly authorized by VoiceStream's Board of Directors.

SECTION 3.05 Consents and Approvals; No Violations. Except as set forth in **Item 3.05** of the VoiceStream Letter, and except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Securities Act, state securities or "Blue Sky" laws, the Exchange Act, the Communications Act, the HSR Act, the DGCL, the rules, regulations and published decisions of the FAA, the FCC and state public utility or service commissions or similar agencies, or the rules and regulations of Nasdaq (collectively, the **"VoiceStream Required Approvals"** and together with the Powertel Required Approvals, the **"Required Regulatory Approvals"**), neither the execution, delivery or performance of this Agreement by VoiceStream and Sub nor the consummation by VoiceStream and Sub of the transactions contemplated hereby will (i) violate or conflict with the respective Certificate of Incorporation or By-laws of VoiceStream and Sub, (ii) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity (except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings could not reasonably be expected to have a Material Adverse Effect on VoiceStream or prevent or materially delay the consummation of the Reorganization), (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, lease, contract, agreement or other instrument or obligation to which VoiceStream or any of the VoiceStream Subsidiaries is a party or by which any of their respective properties are bound, (iv) violate any order, writ, judgment, injunction, decree, statute, rule or regulation applicable to VoiceStream or any of the VoiceStream Subsidiaries or by which any of their respective properties are bound, or (v) result in the creation or imposition of any Lien on any asset of VoiceStream or the VoiceStream Subsidiaries, except in the case of clauses (iii), (iv) or (v) for violations, breaches or defaults that could not reasonably be expected to have a Material Adverse Effect on VoiceStream or prevent or materially delay the consummation of the Reorganization.

SECTION 3.06 SEC Documents and Other Reports. VoiceStream has filed with the SEC all documents required to be filed by it since January 1, 1999 under the Securities Act or the Exchange Act (the **"VoiceStream SEC Documents"**). As of their respective filing dates, the VoiceStream SEC Documents were prepared substantially in accordance with the requirements of the Securities Act or the

Exchange Act, as the case may be, each as in effect on the date so filed, and at the time filed with the SEC (or if amended or superseded by a filing prior to the date hereof, then on the date of such filing) none of the VoiceStream SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of VoiceStream included in the VoiceStream SEC Documents have been prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements, under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of VoiceStream and the consolidated VoiceStream Subsidiaries as of the respective dates thereof and the consolidated results of operations and consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

SECTION 3.07 *Absence of Material Adverse Change.* Except as disclosed in **Item 3.07** of the VoiceStream Letter or in the documents filed by VoiceStream with the SEC and publicly available prior to the date of this Agreement (the "**VoiceStream Filed SEC Documents**"), since December 31, 1999, VoiceStream and the VoiceStream Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course, consistent with past practices, and there has not been (i) any Material Adverse Change with respect to VoiceStream, (ii) except as a result of the VoiceStream Permitted Stock Dividend, any declaration, setting aside or payment of any dividend or other distribution with respect to its capital stock (other than regular quarterly cash dividends) or any redemption, purchase or other acquisition of any of its capital stock, (iii) except as a result of the VoiceStream Permitted Stock Dividend, any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or (iv) any material change in accounting methods, principles or practices by VoiceStream affecting its assets, liabilities or business, except insofar as may have been required by a change in generally accepted accounting principles.

SECTION 3.08 *Information Supplied.* None of the information supplied or to be supplied by VoiceStream specifically for inclusion or incorporation by reference in (i) the Registration Statement or (ii) the Joint Proxy Statement, will, in the case of the Registration Statement, at the time it becomes effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or in the case of the Joint Proxy Statement, at the time of the first mailing of the Joint Proxy Statement or the time of the Stockholder Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply (with respect to VoiceStream) as to form in all material respects with the requirements of the Securities Act, and the Joint Proxy Statement will comply (with respect to VoiceStream) as to form in all material respects with the requirements of the Exchange Act. VoiceStream makes no representation or warranty with respect to any information supplied by Powertel or any other Person who is not an Affiliate of VoiceStream which is contained in the Registration Statement or the Joint Proxy Statement.

SECTION 3.09 *Permits; Compliance with Laws.* (a) Each of VoiceStream and the VoiceStream Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, charters, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for VoiceStream or any of the VoiceStream Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the "**VoiceStream Permits**"), except where the failure to have any of the VoiceStream Permits could not, individually or in the aggregate, have a Material Adverse Effect on VoiceStream and, as of the date of this Agreement, no suspension or cancellation of any of the VoiceStream Permits is pending or, to the knowledge of VoiceStream, threatened, except where the suspension or cancellation of any of the VoiceStream Permits could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on VoiceStream. The business of VoiceStream

and the VoiceStream Subsidiaries is not being conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for possible violations that could not reasonably be expected to have a Material Adverse Effect on VoiceStream or prevent or materially delay the consummation of the Reorganization.

(b) Except as set forth in **Item 3.09** of the VoiceStream Letter:

(i) VoiceStream and each of the VoiceStream Subsidiaries holds, and is qualified and eligible to hold, all material licenses, permits and other authorizations issued or to be issued by the FCC to such entity for the operation of their respective businesses, all of which are set forth in **Item 3.09** of the VoiceStream Letter (the “**VoiceStream FCC Licenses**”).

(ii) The VoiceStream FCC Licenses are valid and in full force and effect, and neither VoiceStream nor any of the VoiceStream Subsidiaries is or has been delinquent in payment on or in default under any installment obligation owed to the United States Treasury in connection with the VoiceStream FCC Licenses. As used herein, the term “full force and effect” means that (A) the orders issuing the VoiceStream FCC Licenses have become effective, (B) no stay of effectiveness of such orders has been issued by the FCC, and (C) the VoiceStream FCC Licenses have not been invalidated by any subsequent published FCC action.

(iii) All material reports and applications required by the Communications Act or required to be filed with the FCC by VoiceStream or any of the VoiceStream Subsidiaries have been filed and are accurate and complete in all material respects.

(iv) VoiceStream and the VoiceStream Subsidiaries are, and have been, in compliance in all material respects with, and the wireless communications systems operated pursuant to the VoiceStream FCC Licenses are and have been operated in compliance in all material respects with, the Communications Act.

(v) There is not pending or, to VoiceStream’s knowledge, threatened, as of the date hereof any application, petition, objection, pleading or proceeding with the FCC or any public service commission or similar body having jurisdiction or authority over the communications operations of VoiceStream or any of the VoiceStream Subsidiaries which is reasonably likely to result in the revocation, cancellation, suspension, dismissal, denial or any materially adverse modification of any VoiceStream FCC License or imposition of any substantial fine or forfeiture against VoiceStream or any of the VoiceStream Subsidiaries.

(vi) No facts are known to VoiceStream or the VoiceStream Subsidiaries which if known by a Governmental Entity of competent jurisdiction would present a substantial risk that any VoiceStream FCC License could be revoked, cancelled, suspended or materially adversely modified or that any substantial fine or forfeiture could be imposed against VoiceStream or any of the VoiceStream Subsidiaries.

(vii) VoiceStream and the VoiceStream Subsidiaries have not made any material misstatements of fact, or omitted to disclose any fact, to any Government Entity or in any report, document or certificate filed therewith, which misstatements or omissions, individually or in the aggregate, could reasonably be expected to subject any material VoiceStream FCC Licenses to revocation or failure to renew, except to the extent that such revocation or failure to renew would not have a Material Adverse Effect on VoiceStream or the transactions contemplated by this Agreement.

SECTION 3.10 Tax Matters. Except as set forth in **Item 3.10** of the VoiceStream Letter or as would not have a Material Adverse Effect on VoiceStream, (i) VoiceStream and each of the VoiceStream Subsidiaries have timely filed (after taking into account any extensions to file) all Tax Returns required to be filed by them either on a separate or combined or consolidated basis; (ii) all such Tax Returns are correct in all respects and accurately disclose in all respects all Taxes required to be paid for the periods covered thereby; (iii) VoiceStream and the VoiceStream Subsidiaries have paid or caused to be paid all Taxes shown as due on such Tax Returns and all Taxes for which no Tax Return was required to be filed,

and the financial statements contained in the VoiceStream SEC Documents reflect an adequate reserve as determined in accordance with generally acceptable accounting principles for all material Taxes payable by VoiceStream and the VoiceStream Subsidiaries and not yet due (other than a reserve for deferred Taxes established to reflect timing differences between book and Tax treatment) for all taxable periods and portions thereof accrued through the date of such financial statements; (iv) neither VoiceStream nor any VoiceStream Subsidiary has waived in writing any statute of limitations in respect of Taxes; (v) there is no action, suit, investigation, audit, claim or assessment that has been formally commenced or proposed to VoiceStream in writing with respect to Taxes of VoiceStream or any of the VoiceStream Subsidiaries; (vi) there are no Liens for Taxes upon the assets of VoiceStream or any VoiceStream Subsidiary except for Liens relating to current Taxes not yet due; (vii) all Taxes which VoiceStream or any VoiceStream Subsidiary is required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued on the books of VoiceStream or such VoiceStream Subsidiary; (viii) none of VoiceStream or any VoiceStream Subsidiary has been a member of any group of corporations filing Tax Returns on a consolidated, combined, unitary or similar basis other than each such group of which it is currently a member; (ix) no deduction of any amount that would otherwise be deductible by VoiceStream or any of the VoiceStream Subsidiaries with respect to taxable periods ending on or before the Effective Time could be disallowed under Section 162(m) of the Code; and (x) neither VoiceStream nor any of the VoiceStream Subsidiaries is a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

SECTION 3.11 *Liabilities.* Except as set forth in the VoiceStream Filed SEC Documents and as permitted by this Agreement, VoiceStream and the VoiceStream Subsidiaries, taken as a whole, do not have any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by generally accepted accounting principles to be set forth on a consolidated balance sheet of VoiceStream and the VoiceStream Subsidiaries or in the notes thereto, other than (i) liabilities and obligations incurred in the ordinary course of business since December 31, 1999 and (ii) liabilities arising after December 31, 1999 which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on VoiceStream.

SECTION 3.12 *Litigation.* Except as disclosed in **Item 3.12** of the VoiceStream Letter or in the VoiceStream Filed SEC Documents, as of the date of this Agreement, there is no suit, action, proceeding or investigation pending or, to VoiceStream's knowledge, threatened, against VoiceStream or any of the VoiceStream Subsidiaries before any Governmental Entity that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on VoiceStream or prevent or materially delay the consummation of the Reorganization. Except as disclosed in **Item 3.12** of the VoiceStream Letter or in the VoiceStream Filed SEC Documents, neither VoiceStream nor any of the VoiceStream Subsidiaries is subject to any outstanding judgment, order, writ, injunction or decree that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on VoiceStream.

SECTION 3.13 *State Takeover Statutes.* To the knowledge of VoiceStream, no state antitakeover statute or similar statute or regulation applicable to VoiceStream is applicable to this Agreement or the transactions contemplated hereby. To the knowledge of VoiceStream, no other "control share acquisition," "fair price," "moratorium" or other antitakeover laws or regulations enacted under Washington or Delaware state laws applicable to VoiceStream apply to this Agreement or any of the transactions related thereto.

SECTION 3.14 *Brokers.* No broker, investment banker, financial advisor or other person, other than Goldman, Sachs & Co., the fees and expenses of which will be paid by VoiceStream and are reflected in an agreement between Goldman, Sachs & Co. and VoiceStream, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of VoiceStream.

SECTION 3.15 *Tax Status.* To the knowledge of VoiceStream after due investigation, neither VoiceStream nor any of its Affiliates has taken any action or failed to take any action which action or failure would jeopardize the qualification of the Merger as a reorganization within the meaning of

Section 368(a) of the Code. To the knowledge of VoiceStream after due investigation, there are no facts or circumstances relating to VoiceStream or its Affiliates, including any covenants or undertakings of VoiceStream pursuant to this Agreement, that would prevent Jones, Day, Reavis & Pogue and/or Preston, Gates & Ellis LLP from delivering the opinion referred to in **Section 6.03(b)** as of the date hereof.

SECTION 3.16 *Interim Operations and Performance of Sub.* Sub is a newly-formed single purpose corporation which has been formed solely for the purpose of engaging in the transactions contemplated hereby, shall engage in no other business or activities and shall have conducted its operations only as contemplated hereby. VoiceStream shall have caused Sub to take all action required pursuant to this Agreement prior to the Effective Time, including the approval and adoption of this Agreement.

SECTION 3.17 *Vote Required.* The Merger requires the approval by VoiceStream as the stockholder of Sub. The only vote required by the stockholders of VoiceStream to approve this Agreement and the transactions contemplated hereby is the VoiceStream Stockholder Approval.

SECTION 3.18 *Transactions with Affiliates.* Except as described in **Item 3.18** of the VoiceStream Letter or the VoiceStream Filed SEC Documents, to VoiceStream's knowledge, no director or executive officer of VoiceStream or any 5% or greater stockholder of VoiceStream is at the date hereof a party to any transaction with VoiceStream or any of the VoiceStream Subsidiaries in which the amount involved exceeds \$60,000, including any contract or arrangement providing for the furnishing of services to or by, providing for rental of real or personal property (including intellectual property) to or from, or otherwise requiring payments to or from VoiceStream or any of the VoiceStream Subsidiaries.

SECTION 3.19 *Opinion of Goldman, Sachs & Co.* The Board of Directors of VoiceStream has received the oral opinion of Goldman, Sachs & Co. on the date hereof, to the effect that, as of the date hereof, the Conversion Number pursuant to this Agreement is fair to VoiceStream from a financial point of view.

ARTICLE IV

COVENANTS RELATING TO CONDUCT OF BUSINESS

SECTION 4.01 *Conduct of Business by Powertel Pending the Reorganization.* During the period from the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, Powertel shall, and shall cause each of the Powertel Subsidiaries to, in all material respects, except as contemplated by this Agreement or the Powertel Merger Agreement or as disclosed in the Powertel Letter (including disclosures regarding the DiGiPH Transaction) or unless VoiceStream shall otherwise agree in writing in advance of the specific action taken, carry on its business in the ordinary course. Without limiting the generality of the foregoing, and except as otherwise contemplated by this Agreement or the Powertel Merger Agreement or as disclosed in the Powertel Letter, during such period, Powertel shall not, and shall not permit any of the Powertel Subsidiaries to, without the prior written consent of VoiceStream:

(a) except for regularly scheduled dividends payable on the Series E Preferred Shares and Series F Preferred Shares in Powertel Common Stock and except for the Powertel Permitted Stock Dividend, (i) declare, set aside or pay any dividends on, or make any other distributions in respect of, or redeem or repurchase, any of its capital stock or other equity interest, except for dividends by a Powertel Subsidiary to its parent, and except that Powertel shall be permitted to acquire shares of Powertel Common Stock, from time to time, to the extent required by (A) Section 5.4 of the Restated Certificate of Incorporation of Powertel and (B) any Powertel Stock Option Plan in connection with the exercise of options and other rights granted thereunder; or (ii) split, combine or reclassify any of its capital stock or other equity interest or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock;

(b) issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock or other equity interest, any other voting securities or any securities convertible into, or any rights, warrants or

options to acquire, any such shares, voting securities or convertible securities, except for (i) issuances of Powertel Common Stock or Powertel Common Stock Equivalents as set forth in **Item 4.01(b)** of the Powertel Letter, (ii) deliveries of shares of its capital stock pursuant to contractual obligations existing prior to the execution of this Agreement and which are otherwise disclosed in this Agreement or the Powertel Letter (including pursuant to antidilution or similar adjustments required by such contractual obligations due to the Powertel Permitted Stock Dividend), or (iii) the Powertel Permitted Stock Dividend;

(c) amend the Restated Certificate of Incorporation of Powertel or Restated By-laws of Powertel or other similar organizational documents;

(d) adopt, amend or propose to amend any stockholder rights plan or related rights plan;

(e) acquire, or agree to acquire, in a single transaction or in a series of related transactions, any business, corporation or partnership, or substantially all of the assets of any of the foregoing, other than (i) transactions which involve individually or in the aggregate a purchase price not in excess of \$500,000, (ii) capital expenditures described in **Section 4.01(f)** below and (iii) transactions in connection with the DiGiPH Transaction;

(f) make or agree to make any new capital expenditure other than capital expenditures (i) in fiscal year 2000 that are contemplated by Powertel's capital budget for fiscal year 2000, provided the aggregate amount of such capital expenditures is less than \$177 million, or (ii) in fiscal year 2001 that are contemplated by Powertel's business plan for fiscal year 2001, as approved by the Board of Directors of Powertel, provided the aggregate amount of such capital expenditures is less than \$181.5 million;

(g) sell, lease, license, encumber or otherwise dispose of, or agree to sell, lease, license, encumber or otherwise dispose of, any of its assets, other than as set forth in **Item 4.01(g)** of the Powertel Letter or in connection with transactions that are in the ordinary course of business and which involve assets having a current value not in excess of \$500,000 individually or in the aggregate (for avoidance of doubt, the sale, lease, license, encumbrance or other disposition of any of the Powertel FCC Licenses or other material assets shall not be in the ordinary course of business);

(h) increase the salary, wages, stipends, bonuses or reimbursable allowances payable or to become payable to its directors or officers, except for increases for officers in the ordinary course of business consistent with past practices; or enter into any employment or severance agreement with, or establish, adopt, enter into or amend, or make any grants or awards under, any Powertel Benefit Plan for the benefit of, any director, officer or employee, except, in each case in the ordinary course of business consistent with past practices or adopt or amend any Powertel Benefit Plan except those specifically set forth in **Annex 5.18** or take any action inconsistent with the provisions set forth in **Annex 5.18**; *provided*, that the aggregate increase in such compensation shall not exceed 5% of the previous year's amount (including those with respect to the timing and amount of, and persons entitled to, grants and awards), as may be required by the terms of any such Powertel Benefit Plan, or to comply with applicable law or as permitted by **Section 4.01(b)**; *provided, further*, that nothing in this **Section 4.01(h)** shall restrict the ability of Powertel's Board of Directors to take the action contemplated by and to comply with the terms of the severance, retention and other plans and arrangements as set forth in **Annex 5.18** and to adopt appropriate resolutions with respect to persons who are officers or directors (including persons who are directors by deputation) of Powertel to cause the transactions relating to the Reorganization that may be considered dispositions under Section 16 of the Exchange Act for such persons to be exempt from such Section;

(i) except as may be required as a result of a change in law or in generally accepted accounting principles, make any change in its method of accounting or its fiscal year;

(j) except in connection with the transactions contemplated hereby, enter into, modify in any material respect, amend in any material respect or terminate any material contract or agreement to which Powertel or any of the Powertel Subsidiaries is a party, or waive, release or assign any material

rights or claims, except to the extent that such contract agreement, modification or amendment would not reasonably be expected to have a Material Adverse Effect on Powertel;

(k) amend any term of any of its outstanding securities in any material respect;

(l) adopt a plan or agreement of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other material reorganization, except for the Powertel Permitted Stock Dividend;

(m) incur, assume or guarantee any material Indebtedness, including any refinancing of existing Indebtedness, for borrowed money unless such Indebtedness is prepayable at the election of Powertel on or after the Closing Date and the aggregate prepayment penalty and all other fees associated with such Indebtedness do not exceed \$1,000,000;

(n) create, incur, assume or suffer to exist any material Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens incurred in the ordinary course of business or to secure Indebtedness, Liens arising by operation of law and not yet due and payable or other obligations permitted by this Agreement (including refinancing of existing Indebtedness);

(o) create, incur, assume or suffer to exist any obligation whereby Powertel or the Powertel Subsidiaries guarantees any Indebtedness, leases, dividends or other obligations of any third party;

(p) make any loan or capital contributions to or investment in any Person, other than in the ordinary course of business or as set forth in **Item 4.01(p)** of the Powertel Letter, as required in connection with the DiGiPH Transaction and loans or capital contributions to or investments in wholly owned Powertel Subsidiaries;

(q) enter into any agreement or arrangement that materially limits or otherwise materially restricts Powertel or any of the Powertel Subsidiaries or any successor thereto or that could, after the Effective Time, reasonably be expected to materially limit or restrict VoiceStream, any of the VoiceStream Subsidiaries or the Surviving Corporation from engaging in the business of providing wireless communications services or developing wireless communications technology anywhere in the world or otherwise from engaging in any other business;

(r) initiate, settle, or appeal or propose to settle, initiate or appeal any material litigation, investigation, arbitration, proceeding or other claim;

(s) make any material tax election or enter into any settlement or compromise of any material tax liability;

(t) take any action, other than as expressly permitted by this Agreement, that could reasonably be expected to make any representation or warranty of Powertel hereunder inaccurate and have a Material Adverse Effect on Powertel at the Effective Time;

(u) adopt, amend or propose to amend any Powertel Benefit Plan or make any discretionary contributions to any ERISA Benefit Plan other than as may be required by law or as may be required to maintain compliance with provisions of the Code; *provided, however*, Powertel (1) may make an annual 3% of compensation profit sharing contribution and (2) may make matching contributions of 50% of the first 2% of compensation contributed by participants, to Powertel's profit sharing Code § 401(k) plan (similar to past practices);

(v) enter into (i) leveraged derivative contracts (defined as contracts that use a factor to multiply the underlying index exposure) or (ii) other derivative contracts except for the purpose of hedging known interest rate and foreign exchange exposures or otherwise reducing Powertel's cost of financing; *provided, however*, that employee stock ownership plans and other pension and deferred compensation plans of Powertel may enter into derivative contracts as part of their ordinary course investment strategy;

(w) file any amended Tax Returns if the result of such amendment would result in a material increase of Powertel's tax liability;

(x) take any action which would reasonably be expected to materially adversely affect or materially delay the ability of any of the parties to obtain any Powertel Required Regulatory Approval or consummate the transactions contemplated hereby;

(y) take any action that would be reasonably likely to prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code;

(z) other than pursuant to this Agreement, take any action to cause the Powertel Common Stock to cease to be quoted on Nasdaq;

(aa) notwithstanding anything in this Agreement to the contrary, during the period of time beginning on the fifth Business Day prior to the Effective Time and extending until and including the Effective Time, other than with respect to the Powertel Permitted Stock Dividend, Powertel shall not take or omit to take any action that could increase the number of shares of Powertel Stock outstanding on a fully diluted basis; or

(bb) enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

SECTION 4.02 *Conduct of Business by VoiceStream Pending the Reorganization.* During the period from the date of this Agreement until the Effective Time, VoiceStream shall not, and shall not permit any of the VoiceStream Subsidiaries to, without the prior written consent of Powertel:

(a) amend the Certificate of Incorporation or the By-laws or the equivalent organizational documents of VoiceStream or of any VoiceStream Subsidiary in any manner that would be adverse to Powertel or its stockholders;

(b) effect any reclassification, recapitalization or restructuring or other similar transaction that results in the direct or indirect receipt by holders of VoiceStream Common Stock of any assets, property or cash in respect of such VoiceStream Common Stock, except for the VoiceStream Permitted Stock Dividend;

(c) take any action that would or could reasonably be expected to prevent, impair or materially delay the ability of VoiceStream to consummate the transactions contemplated by this Agreement;

(d) fail to make in a timely manner any filings with the SEC required under the Securities Act or the Exchange Act or the Regulations promulgated thereunder, provided that this provision shall not apply to any filings with the SEC required to be made by any VoiceStream Subsidiary;

(e) change (i) its methods of accounting or accounting practices in any material respect except as required by concurrent changes in generally accepted accounting principles or by law or (ii) its fiscal year;

(f) enter into or acquire any new line of business that (i) is material to VoiceStream and (ii) is not strategically related to the current business or operations of VoiceStream;

(g) take any action that would reasonably be expected to have a Material Adverse Effect or materially delay the ability of any of the parties to obtain any VoiceStream Required Regulatory Approval; or

(h) enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

SECTION 4.03 *No Solicitation.*

(a) From and after the date hereof until the earlier of the Effective Time or the termination of the Agreement, Powertel shall not, nor shall it permit any of the Powertel Subsidiaries to, nor shall they authorize or permit any of their respective officers, directors or employees to, and shall use their best efforts to cause any investment banker, financial advisor, attorney, accountants or other representatives retained by them or any of their respective Subsidiaries not to, directly or indirectly through another

Person, (i) solicit, initiate or encourage (including by way of furnishing information), or knowingly take any other action designed to facilitate, any Alternative Transaction (as defined below), or (ii) continue or participate in any discussions or negotiations regarding any Alternative Transaction; *provided, however*, that if, at any time prior to the time that the Powertel Stockholders Approval is obtained, the Board of Directors of Powertel receives an unsolicited *bona fide* proposal and determines in good faith and after the receipt of advice from outside counsel that providing information to the Third Party, making such proposal or participating in negotiations or discussions with the Third Party is reasonably likely to result in a Superior Proposal and if Powertel has fully and completely complied with all its obligations under this **Section 4.03**, Powertel may, subject to giving VoiceStream three (3) Business Days' advance written notice of its intention to do so and obtaining a confidentiality agreement from the Third Party substantially similar to the Confidentiality Agreement between Powertel and VoiceStream dated as of March 9, 2000 (the "**Confidentiality Agreement**"), (x) furnish information with respect to Powertel and the Powertel Subsidiaries, and (y) engage in discussions and negotiations regarding such proposal.

(b) Powertel will notify VoiceStream promptly (but in no event later than 24 hours) after receipt by Powertel (or any of its advisors) of any Alternative Transaction, or of any request (other than in the ordinary course of business and not related to an Alternative Transaction) for non-public information relating to Powertel or any of the Powertel Subsidiaries or for access to the properties, books or records of Powertel or any of the Powertel Subsidiaries by any Person who is known to be considering making, or has made, an Alternative Transaction. Powertel shall provide such notice orally and in writing and shall identify the Person making, and the terms and conditions of, any such Alternative Transaction or request. Powertel shall keep VoiceStream fully informed, on a prompt basis (but in any event no later than 24 hours), of the status and details of any such Alternative Transaction or request. Powertel shall, and shall cause the Powertel Subsidiaries and the directors, employees and other agents of Powertel and the Powertel Subsidiaries to, cease immediately and cause to be terminated all activities, discussions or negotiations, if any, with any Persons conducted prior to the date hereof with respect to any Alternative Transaction.

(c) Powertel (i) agrees not to release any Third Party from, or waive any provision of, or fail to enforce, any standstill agreement or similar agreement to which it is a party related to, or which could affect, an Alternative Transaction and agrees that VoiceStream shall be entitled to enforce Powertel's rights and remedies under and in connection with such agreements, and (ii) acknowledges that the provisions of clause (i) are an important and integral part of this Agreement. Nothing contained in this **Section 4.03** or in **Section 5.03** shall prohibit Powertel (x) from taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) promulgated under the Exchange Act, or (y) from making any disclosure to its stockholders if, in the good faith judgment of the Board of Directors of Powertel, after receipt of advice from outside counsel, failure to disclose would result in a reasonable likelihood that the Board of Directors of Powertel would breach its duties to Powertel's stockholders under Delaware law.

(d) For purposes of this Agreement, "**Alternative Transaction**" means a proposal or intended proposal, regarding any of (i) a transaction or series of transactions pursuant to which any Person or "group" of Persons, other than VoiceStream and its Subsidiaries (a "**Third Party**"), acquires or would acquire, directly or indirectly, "beneficial ownership" (as such terms are defined in or interpreted for purposes of Rule 13d-3 under the Exchange Act) of outstanding shares representing more than twenty percent (20%) of the voting power of the outstanding capital stock of Powertel or pursuant to a tender offer or exchange offer or otherwise, (ii) any acquisition or proposed acquisition of, or business combination with Powertel or any of the Powertel Subsidiaries, as applicable, by a merger or other business combination (including any so-called "merger-of-equals" and whether or not Powertel or any of the Powertel Subsidiaries, as the case may be, is the entity surviving any such merger or business combination), or (iii) any other transaction pursuant to which any Third Party acquires or would acquire, directly or indirectly, control of assets (including for this purpose the outstanding equity securities of the Powertel Subsidiaries and any entity surviving the merger or business combination including any of them) of Powertel or any of the Powertel Subsidiaries, as the case may be, for consideration equal to

twenty percent (20%) or more of the fair market value of all of the outstanding shares of the Powertel capital stock on the date of this Agreement; *provided*, that for purposes of this Agreement the term "Alternative Transaction" does not include the Powertel Merger or the Powertel Merger Agreement.

SECTION 4.04 *Disclosure of Certain Matters; Delivery of Certain Filings.* Powertel shall promptly advise VoiceStream orally and in writing if there occurs, to the knowledge of Powertel, any change or event which results in the executive officers of Powertel having a good faith belief that such change or event has resulted in or is reasonably likely to result in a Material Adverse Effect on Powertel or that could reasonably be expected to prevent or materially delay consummation of the Reorganization. VoiceStream shall promptly advise Powertel orally and in writing if there occurs, to the knowledge of VoiceStream, any change or event which results in the executive officers of VoiceStream having a good faith belief that such change or event has resulted in or is reasonably likely to result in a Material Adverse Effect on VoiceStream or that could reasonably be expected to prevent or materially delay consummation of the Reorganization. VoiceStream shall promptly provide to Powertel a copy of any written notice given by VoiceStream to DT or received by VoiceStream from DT of termination of the DT Merger Agreement. Powertel shall promptly provide to VoiceStream, and VoiceStream shall promptly provide to Powertel, copies of all filings made by Powertel or VoiceStream, as the case may be, with any Governmental Entity in connection with this Agreement and the transactions contemplated hereby and all notices and other communications and correspondence from any Governmental Entity that relate to the Reorganization.

SECTION 4.05 *Tax Status.* During the period from the date of this Agreement through the Effective Time, each of VoiceStream, Powertel and their respective Affiliates shall use its reasonable best efforts (i) to cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code and (ii) to obtain the opinions of counsel referred to in **Section 6.02(b)** and **Section 6.03(b)**, including the execution of the tax certificates referenced therein.

SECTION 4.06 *Control of Operations.* Nothing contained in this Agreement shall give VoiceStream, directly or indirectly, the right to "control" or "direct," as such terms are construed under applicable rules or regulations of the FCC, Powertel's operations prior to the Effective Time. Prior to the Effective Time, Powertel shall exercise, consistent with the terms and conditions of this Agreement, "control" over its respective operations.

SECTION 4.07 *Powertel Merger Agreement.* Powertel will not modify, amend or waive in any material respect the provisions of the Powertel Merger Agreement without VoiceStream's prior written consent, except for the amendments to the Powertel Merger Agreement on September 28, 2000 and as of February 8, 2001.

ARTICLE V

ADDITIONAL AGREEMENTS

SECTION 5.01 *Employee Benefits.*

(a) As of the Effective Time, Powertel will have terminated all Powertel Benefit Plans except for those Powertel Benefit Plans that VoiceStream requests not be terminated and those Powertel Benefit Plans described in **Annex 5.18**. VoiceStream shall take all necessary action so that after the Effective Time, any current or former employee of Powertel who is eligible to participate in a Powertel Benefit Plan as of the Effective Time shall either be eligible to continue his or her participation in such Powertel Benefit Plan or participate in a corresponding employee benefit plan maintained by VoiceStream or any of its Subsidiaries, subject to the terms of such corresponding plan. VoiceStream shall have the sole discretion to determine which current or former employees of Powertel will continue participation in a Powertel Benefit Plan after the Effective Time and which will commence participation in a corresponding employee benefit plan maintained by VoiceStream or any of its Subsidiaries after the Effective Time and, with respect to current or former employees who transfer participation to such a corresponding plan, when such transfer will occur. VoiceStream need not treat all current and former employees of Powertel (including those who are similarly situated) in the same manner with respect to which plans they

participate in and when, if at all, they transfer participation from a Powertel Benefit Plan to a corresponding employee benefit plan maintained by VoiceStream or any of its Subsidiaries. For example, VoiceStream may decide to have a current or former employee of Powertel continue participation after the Effective Time in certain Powertel Benefit Plans that have not been terminated, and with respect to other benefits transition his participation on or shortly after the Effective Time to a corresponding employee benefit plan maintained by VoiceStream or one of its Subsidiaries. VoiceStream may take such actions (or cause its Subsidiaries or the Surviving Corporation to take such actions) as are necessary or advisable to accomplish the foregoing, including, without limitation, amending the eligibility provisions of plans of VoiceStream, any of its Subsidiaries or the Surviving Corporation (including, without limitation, Powertel Benefit Plans that are not terminated on or before the Effective Time).

(b) Except as otherwise provided in this **Section 5.01**, nothing in this Agreement shall be interpreted as limiting the power of the Surviving Corporation to amend or terminate any particular Powertel Benefit Plan or any other particular employee benefit plan, program, agreement or policy or as requiring the Surviving Corporation to offer to continue (other than as required by its terms) any written employment contract or to continue the employment of any specific person; *provided, however*, (1) that no such termination or amendment may take away benefits or any other payments already accrued as of the time of such termination or amendment without the consent of such person, except as allowed by law, and (2) that nothing in this **Section 5.01** shall be interpreted as limiting or modifying any requirement in **Section 5.18** or provisions of **Annex 5.18**.

(c) VoiceStream shall, or shall cause the Surviving Corporation to, (A) waive all limitations, to the extent allowable under applicable law, as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the current and former employees of Powertel and its Subsidiaries under any welfare or fringe benefit plan in which such employees and former employees may be eligible to participate after the Effective Time (other than a Powertel Benefit Plan that is not terminated on or before the Effective Time), other than limitations or waiting periods that are in effect with respect to such employees and that have not been satisfied under the corresponding welfare or fringe benefit plan maintained by Powertel for such current and former employees prior to the Effective Time, (B) provide each current and former employee with credit under any welfare plans in which such employee or former employee becomes eligible to participate after the Effective Time for any co-payments and deductibles paid by such current or former employee for the then current plan year under the corresponding welfare plans maintained by Powertel prior to the Effective Time, and (C) provide (to the extent allowed by law and Treasury regulations applicable to tax-qualified plans) each current and former employee with full credit for purposes of eligibility, vesting, and determination of the level of benefits under any employee benefit plans, policies, practices or arrangements maintained by VoiceStream or any VoiceStream Subsidiary for such current or former employee's service with Powertel or any Powertel Subsidiary to the same extent recognized by Powertel immediately prior to the Effective Time.

(d) Except as expressly contemplated under **Section 5.02** of this Agreement and except in connection with the Powertel Preferred Stock Dividend, neither Powertel nor any affiliate thereof shall, from the date hereof until the Effective Time, without the prior express written consent of VoiceStream, make any contribution, sale or other transfer of Powertel Stock or any other "employer security" (as such term is defined in Section 407 of ERISA), whether to satisfy a required obligation, to reimburse for expenses incurred, or otherwise, to any Powertel Benefit Plan or to the Powertel stock fund (or any other fund) under the Powertel 401(k) Profit Sharing Plan. Moreover, Powertel shall, promptly after the date hereof, amend the Powertel 401(k) Profit Sharing Plan (as amended and restated effective as of January 1, 1998, and further amended August 23, 1999), (a) to require that all contributions, from whatever source, be made in the form of cash and (b) to preclude the use of any present or future Powertel 401(k) Profit Sharing Plan assets to purchase from Powertel or any affiliate thereof shares of Powertel Stock or other "employer securities" (as such term is defined in Section 407 of ERISA); it being understood, however, that such amendment need not preclude the Powertel 401(k) Profit Sharing Plan from purchasing Powertel Stock on the open market from any person or entity other than Powertel or an affiliate thereof,

nor require that shares of Powertel Stock and units in the Powertel stock fund presently under the Powertel 401(k) Profit Sharing Plan be sold or otherwise liquidated.

SECTION 5.02 *Options; Restricted Stock Awards.*

(a) Prior to the Effective Time, the Board of Directors of Powertel (or the Stock Option Compensation Committee of the Board of Directors) shall adopt such resolutions or shall take such other actions as may be required, with respect to Powertel Stock Options and the Powertel Restricted Stock Plan, to specifically approve the transactions contemplated by this **Section 5.02**.

(b) At the Effective Time, each Powertel Stock Option which is outstanding immediately prior to the Effective Time pursuant to any Powertel Stock Plan shall become and represent an option to purchase the number of shares of VoiceStream Common Stock (a “**Substitute Option**”) determined by multiplying the number of shares of Powertel Common Stock subject to such Powertel Stock Option immediately prior to the Effective Time by the Conversion Number, at an exercise price per share of VoiceStream Common Stock (increased to the nearest whole cent) equal to the exercise price per share of Powertel Common Stock subject to such Powertel Stock Option immediately prior to the Effective Time divided by the Conversion Number; provided, however, that in the case of any Powertel Stock Option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code (“**incentive stock options**”), the option price, the number of shares purchasable pursuant to such option and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code. The parties intend that the assumption of incentive stock options provided for under this **Section 5.02** shall meet the requirements of Section 424(a) of the Code, and this **Section 5.02** shall be interpreted in a manner consistent with such intent. All other terms and conditions applicable to the Powertel Stock Options, including vesting, shall remain unchanged with respect to the Substitute Options (except to the extent that such terms and conditions may be altered in accordance with the applicable Powertel Stock Option Plan or stock option agreements related thereto). No fractional shares of VoiceStream Common Stock will be issued upon the exercise of Substitute Options. In lieu of such issuance, the shares of VoiceStream Common Stock issued pursuant to the terms of this Agreement shall be rounded to the closest whole share of VoiceStream Common Stock. After the Effective Time, except as otherwise provided in this **Section 5.02**, each Substitute Option shall be exercisable upon the same terms and conditions as were applicable to the related Powertel Stock Option immediately prior to the Effective Time, after giving effect to the resolutions and other actions described in this **Section 5.02**. Not later than the Effective Time, VoiceStream shall file a registration statement on Form S-8 with respect to or otherwise include in an existing registration statement the shares of VoiceStream Common Stock to be issued upon exercise of the Substitute Options and shall use its reasonable best efforts to maintain the effectiveness of such registration statement for so long as the Substitute Options shall remain outstanding.

(c) At the Effective Time, the Powertel Restricted Stock Plan shall terminate and any unvested Powertel Restricted Stock Awards shall become fully vested, except as otherwise provided in the applicable agreements relating to such Powertel Restricted Stock Awards.

SECTION 5.03 *Stockholders Meetings.*

(a) As promptly as practicable after the Registration Statement is declared effective under the Securities Act, Powertel shall duly give notice of, convene and hold a meeting of its stockholders (the “**Powertel Stockholders Meeting**”) in accordance with Delaware law for the purpose of obtaining the Powertel Stockholder Approval and shall, subject to the provisions of **Section 5.03(d)** hereof, through its Board of Directors, recommend to its stockholders the approval and adoption of this Agreement, the Merger and the other transactions contemplated hereby and shall use its reasonable best efforts to obtain the Powertel Stockholder Approval.

(b) As promptly as practicable after the Registration Statement is declared effective under the Securities Act, VoiceStream shall duly give notice of, convene and hold a meeting of its stockholders (the “**VoiceStream Stockholders Meeting**”) in accordance with the DGCL for the purpose obtaining the VoiceStream Stockholder Approval and shall, through its Board of Directors, recommend to its

stockholders the approval and adoption of this Agreement and shall use its reasonable best efforts to obtain the VoiceStream Stockholder Approval.

(c) Powertel and VoiceStream shall coordinate and cooperate with respect to the timing of the Stockholder Meetings and shall use their reasonable best efforts to hold such meetings on the same day.

(d) Neither the Board of Directors of Powertel nor any committee thereof shall (i) except as expressly permitted by this **Section 5.03(d)**, withdraw, qualify or modify, or propose publicly to withdraw, qualify or modify, in a manner adverse to VoiceStream, the approval or recommendation of such Board of Directors or such committee of this Agreement, the Merger and the other transactions contemplated hereby, (ii) approve or recommend, or propose publicly to approve or recommend, any Alternative Transaction, or (iii) cause Powertel to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement related to any Alternative Transaction. Notwithstanding the foregoing, in the event that prior to the time the Powertel Stockholder Approval is obtained, Powertel receives a Superior Proposal (as defined below), the Board of Directors of Powertel may (subject to this and the following sentences) inform the Powertel stockholders that it no longer recommends adoption and approval of this Agreement by the Powertel's stockholders (a "**Subsequent Determination**"), but only at a time that is after the fifth Business Day following VoiceStream's receipt of written notice advising VoiceStream that the Board of Directors of Powertel has received a Superior Proposal specifying the material terms and conditions of such Superior Proposal (and including a copy or draft copy thereof with all accompanying documentation or draft documentation, if in writing), identifying the Person making such Superior Proposal and stating that it intends to make a Subsequent Determination. After providing such notice, Powertel shall provide a reasonable opportunity to VoiceStream to make such adjustments in the terms and conditions of this Agreement as would enable Powertel to proceed with its recommendation to its stockholders without a Subsequent Determination; *provided, however*, that any such adjustment shall be at the discretion of Powertel and VoiceStream at the time. For purposes of this Agreement, a "**Superior Proposal**" means any proposal (on its most recently amended or modified terms, if amended or modified) made by a Third Party to enter into an Alternative Transaction which the Board of Directors of Powertel determines in its good faith judgment (based on, among other things, the advice of a financial advisor of nationally recognized reputation) to be more favorable to the Powertel's stockholders than the transactions contemplated by this Agreement taking into account all relevant factors (including whether, in the good faith judgment of the Board of Directors of Powertel, after obtaining the advice of a financial advisor of nationally recognized reputation, the Third Party is reasonably able to finance the transaction, and any proposed changes to this Agreement that may be proposed by VoiceStream in response to such Alternative Transaction). Powertel shall submit this Agreement to its stockholders at the Powertel Stockholders Meeting even if the Board of Directors of Powertel shall have made a Subsequent Determination.

SECTION 5.04 Preparation of the Registration Statement and Joint Proxy Statement. As promptly as reasonably practicable following the date of this Agreement, Powertel and VoiceStream shall prepare and file with the SEC the Joint Proxy Statement and VoiceStream shall prepare and file with the SEC the Registration Statement, in which the Joint Proxy Statement will be included as a prospectus. VoiceStream shall use its reasonable best efforts, with the cooperation and assistance of Powertel, to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the Reorganization and the transactions contemplated in connection therewith. VoiceStream shall also take any reasonable action (other than qualifying to do business in any jurisdiction in which it is now not so qualified) required to be taken under any applicable state securities laws in connection with the issuance of VoiceStream Common Stock, in connection with the Reorganization and upon any exercise of the Substitute Options. Powertel shall furnish all information concerning Powertel and the holders of shares of Powertel Stock as may be reasonably requested by VoiceStream in connection with any such action. VoiceStream shall notify Powertel promptly of the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff for amendments or supplements to the Registration Statement or the Joint Proxy Statement or for additional information and will supply Powertel with copies of all correspondence between VoiceStream or any of its representatives, on the one hand, and the SEC or its

staff, on the other hand, with respect to the Registration Statement, the Joint Proxy Statement or the Reorganization. If at any time prior to the Powertel Stockholders Meeting or the VoiceStream Stockholders Meeting there shall occur any event that should be set forth in an amendment or supplement to the Registration Statement or the Joint Proxy Statement, each of VoiceStream and Powertel shall promptly prepare and mail to the stockholders of Powertel and VoiceStream such an amendment or supplement. VoiceStream and Powertel shall cooperate with one another and with DT in the preparation of the Registration Statement, the DT Registration Statement, the Joint Proxy Statement or any amendment or supplement thereto and in having the Registration Statement, the DT Registration Statement and the Joint Proxy Statement declared effective as soon as practicable.

SECTION 5.05 *Notification of Receipt of Proxy.*

(a) Promptly upon receipt by Powertel from any Powertel stockholder who is a party to the Powertel Stockholder Agreement of a proxy card sent to the Powertel stockholders with the Joint Proxy Statement and in accordance with the Powertel Stockholder Agreement, but in no event later than the second Business Day following such receipt or, if such receipt is on or after the fifth Business Day prior to the Closing, then on the date of such receipt, Powertel shall notify VoiceStream orally of its receipt and provide VoiceStream with a copy of such proxy card.

(b) Promptly upon receipt by VoiceStream from any VoiceStream stockholder who is a party to a VoiceStream Stockholder Agreement of a proxy card sent to the VoiceStream Stockholders with the Joint Proxy Statement and in accordance with such VoiceStream Stockholder Agreement, but in no event later than the second Business Day following such receipt or, if such receipt is on or after the fifth Business Day prior to the Closing, then on such date of receipt, VoiceStream shall notify Powertel orally of its receipt and provide Powertel with a copy of such proxy card.

SECTION 5.06 *Comfort Letters.*

(a) Powertel shall have received a "comfort" letter of Arthur Andersen LLP, Powertel's independent public accountants, dated a date within two (2) business days prior to the date of the first mailing of the Joint Proxy Statement, addressed to Powertel, in form and substance reasonably satisfactory to Powertel and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with registration statements on Form S-4 with respect to the financial statements of VoiceStream included in the Joint Proxy Statement and the Registration Statement.

(b) VoiceStream shall have received a "comfort" letter of Arthur Andersen LLP, VoiceStream's independent public accountants, dated a date within two (2) business days prior to the date of the first mailing of the Joint Proxy Statement, addressed to VoiceStream, in form and substance reasonably satisfactory to VoiceStream and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with registration statements on Form S-4 with respect to the financial statements of Powertel included in the Joint Proxy Statement and the Registration Statement.

SECTION 5.07 *Access to Information.* Upon reasonable notice and subject to restrictions contained in the Confidentiality Agreement and other confidentiality agreements to which Powertel is subject, (a) Powertel shall, and shall cause each Powertel Subsidiary to, afford to VoiceStream and to the officers, employees, accountants, counsel and other representatives of VoiceStream all reasonable access, during normal business hours during the period prior to the Effective Time, to all their respective lenders, agents and other representatives, properties, assets, books, contracts, commitments and records and, during such period, Powertel shall (and shall cause each Powertel Subsidiary to) furnish promptly to VoiceStream all information concerning its business, properties and personnel as VoiceStream may reasonably request, including a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the federal or state securities laws or the federal Tax laws and (b) VoiceStream shall, and shall cause each VoiceStream Subsidiary to, afford to Powertel and to the officers, employees, accountants, counsel and other representatives of Powertel all reasonable access, during normal business hours during the period prior to the Effective Time, to all their respective properties, assets, books, contracts, commitments and records and, during such

period, VoiceStream shall (and shall cause each VoiceStream Subsidiary to) furnish promptly to Powertel all information concerning its business, properties and personnel as Powertel may reasonably request, including a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the federal or state securities laws.

SECTION 5.08 *Compliance with the Securities Act.*

(a) No later than thirty (30) days following the date of this Agreement, Powertel shall cause to be prepared and delivered to VoiceStream a list identifying all persons who, at the time of the Powertel Stockholders Meeting, may be deemed to be an "affiliate" of Powertel, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "**Rule 145 Affiliates**"). Powertel shall use reasonable efforts to cause each person who is identified as a Rule 145 Affiliate in such list to deliver to VoiceStream on or prior to the Effective Time a written agreement, in the form attached hereto as **Annex C**, that such Rule 145 Affiliate shall not sell, pledge, transfer or otherwise dispose of any shares of VoiceStream Common Stock issued to such Rule 145 Affiliate in connection with the Reorganization, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act.

(b) Prior to the Effective Time, the Board of Directors of VoiceStream (or the committee of the Board of Directors of VoiceStream composed solely of two (2) or more "Non-Employee Directors," as that term is defined in Rule 16b-3(b)(3)(i) under the Exchange Act, administering the stock plans of VoiceStream) shall adopt such resolutions or shall take such other actions as are required to specifically approve the acquisitions of VoiceStream Common Stock and Substitute Options at the Effective Time, as contemplated by **Sections 1.06(c)** and **5.02**, by directors, officers or employees of Powertel who may become directors or officers of VoiceStream, such approvals to be given for the purpose of exempting such acquisitions under Rule 16b-3 under the Exchange Act, it being acknowledged that such approvals shall not adversely affect VoiceStream's ability subsequently to determine that any such person has not in fact become a director or officer of VoiceStream.

SECTION 5.09 *Nasdaq Listings.* VoiceStream shall use reasonable best efforts to be included on Nasdaq, upon notification of issuance, the shares of VoiceStream Common Stock to be issued in connection with the Reorganization and upon any exercise of the Substitute Options.

SECTION 5.10 *Fees and Expenses.*

(a) Except as provided below in this **Section 5.10** or **Section 5.14**, all fees and expenses incurred in connection with the Reorganization, this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees or expenses, whether or not the Reorganization is consummated, except that the costs and expenses, other than attorneys' fees, incurred in connection with (i) the printing and mailing of the Joint Proxy Statement with respect to the Reorganization, the DT Merger and the Powertel Merger, the Registration Statement, the DT Registration Statement and the Powertel Registration Statement (and any amendment or supplement thereto) and any prospectus included in such registration statements (and any amendment or supplement thereto) shall be borne one-third by VoiceStream, one-third by DT and one-third by Powertel, and (ii) any filing fees (including fees payable to the SEC and state regulatory authorities) with respect to the Joint Proxy Statement and the Registration Statement shall be borne one-half by VoiceStream and one-half by Powertel.

(b) In the event that VoiceStream terminates this Agreement pursuant to **Section 7.01(c)(i)**, **Section 7.01(c)(ii)** or **Section 7.01(e)(ii)** or Powertel terminates this Agreement pursuant to **Section 7.01(d)(ii)**, Powertel shall pay, or cause to be paid, in same day funds to VoiceStream within one (1) Business Day of such termination, \$150,000,000 plus expenses not to exceed \$10,000,000 (the "**Termination Fee**"); *provided that*, in the event a termination fee is also payable by Powertel in connection with the termination of the Powertel Merger Agreement, Powertel shall pay each of DT and VoiceStream \$75,000,000, plus expenses not to exceed \$10,000,000 in the aggregate.

(c) In the event that Powertel terminates this Agreement pursuant to **Section 7.01(d)(i)**, **Section 7.01(d)(iii)** or **Section 7.01(e)(i)**, VoiceStream shall pay, or cause to be paid, the Termination

Fee to Powertel in same day funds within one (1) Business Day following such termination of this Agreement.

(d) Powertel and VoiceStream agree that the agreements contained in **Section 5.10(b)** and **Section 5.10(c)** above are an integral part of the transactions contemplated by this Agreement and are an inducement to VoiceStream and Powertel to enter into this Agreement. If Powertel fails to promptly pay to VoiceStream any fee due under such **Section 5.10(b)**, or if VoiceStream fails to promptly pay Powertel any fee due under **Section 5.10(c)**, then the non-paying party shall pay the costs and expenses (including legal fees and expenses) of the other party in connection with any action, including the filing of any lawsuit or other legal action, taken to collect payment, together with interest on the amount of any unpaid fee at the publicly announced prime rate of Citibank, N.A., from the date such fee was required to be paid.

SECTION 5.11 Public Announcements. VoiceStream and Powertel will consult with each other and with DT before issuing any press release with respect to the transactions contemplated by this Agreement and shall not issue any such press release prior to such consultation, except as may be required by applicable law, fiduciary duties or by obligations pursuant to any listing agreement with any national securities exchange. The parties will cooperate in preparing a joint press release announcing the execution of this Agreement.

SECTION 5.12 State Takeover Laws. If any "fair price" or "control share acquisition" statute or other similar statute or regulation shall become applicable to the transactions contemplated hereby, VoiceStream and Powertel and their respective Boards of Directors shall use reasonable best efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to minimize the effects of any such statute or regulation on the transactions contemplated hereby.

SECTION 5.13 Indemnification; Directors and Officers Insurance.

(a) VoiceStream shall, or shall cause the Surviving Corporation to, continue to provide, fulfill and honor all rights to indemnification or exculpation existing in favor of a director, officer, employee or agent (an "**Indemnified Person**") of Powertel or any of the Powertel Subsidiaries (including rights relating to advancement of expenses and indemnification rights to which such persons are entitled because they are serving as a director, officer, agent or employee of another entity at the request of Powertel or any of the Powertel Subsidiaries), as provided in the Restated Certificate of Incorporation of Powertel, the Restated By-laws of Powertel or any indemnification agreement, in each case, as in effect on the date of this Agreement, and relating to actions or events through the Effective Time, and such rights to indemnification shall survive the Reorganization and shall continue in full force and effect, without any amendment thereto; *provided, however*, that neither VoiceStream nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) to the extent involving any claim initiated by such Indemnified Person unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of Powertel or unless such proceeding is brought by an Indemnified Person to enforce rights under this **Section 5.13**; *provided further* that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Restated Certificate of Incorporation of Powertel, the Restated By-laws of Powertel or any such agreement, as the case may be, shall be made by independent legal counsel selected by VoiceStream and reasonably acceptable to such Indemnified Person; *provided further* that VoiceStream and the Surviving Corporation will cooperate and use all reasonable efforts to assist in the vigorous defense of any such matter; and *provided further* that nothing in this **Section 5.13** shall impair any rights of any Indemnified Person. Without limiting the generality of the preceding sentence, in the event that any Indemnified Person becomes involved in any actual or threatened action, suit, claim, proceeding or investigation after the Effective Time relating to actions prior to the Effective Time, VoiceStream shall, or shall cause the Surviving Corporation to, promptly advance to such Indemnified Person his or her legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person, to the